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Letter Ruling 01-12: Engaged in Business; Filing of Massachusetts Business Trust with Sec. of State

November 8, 2001

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This is in reply to your request on behalf of ***** Bank for a ruling that the filing of a Massachusetts Business Trust document with the Massachusetts Secretary of State, without more, will not subject such Massachusetts Business Trust to taxation in Massachusetts.

STATEMENT OF FACTS

***** Bank, a non United States bank, is interested in raising capital from United States investors. As far as is relevant to this request, the entities used to accomplish the capital raising and their main activities are as follows:

A. Trust

Bank intends to organize ***** Trust, a Massachusetts Business Trust ("MBT"), the transferable common securities of which will be owned by a nominal U.S. tax resident subsidiary of the bank. Trust will issue transferable Trust ***** Securities ("Trust Securities") to US investors. The investors will also enter into a forward purchase contract for the purchase of ordinary shares of the bank. The investors will pledge the Trust Securities as security for the purchase of the ordinary shares. On the settlement date under the forward purchase contract, the investors will be obliged either to pay the cash amount required for the purchase of the ordinary shares or to deliver the Trust Securities to the Bank in full satisfaction of their purchase obligation. If the investors default under the forward purchase contract, the Trust Securities will be delivered to the Bank by the collateral agent. Investors will receive non cumulative distributions on the Trust Securities. Trust will invest the proceeds from the issue of its securities in Fund Securities issued by "Fund Trust."^[1] The Trust will have the right to redeem all of the outstanding Trust Securities following settlement under the forward purchase contract. For federal tax purposes, the Trust will be treated as a grantor trust.

In certain defined circumstances, the trustees of the Trust may elect to liquidate the Trust and distribute the Fund Securities to the investors (or the collateral agent if applicable). These circumstances are where there are adverse changes in U.S. investment company law or tax law.

Trust will conduct no business and have no trustees, employees, offices or property in Massachusetts. No contracts will be executed by Trust in Massachusetts. Trust's books and records will be maintained outside Massachusetts and its trustee will be a non-Massachusetts trustee. For purposes of organizing as an MBT, Trust will file and record its declaration of trust instrument with the Massachusetts Secretary of State, as required by G. L. c. 182, § 2. Trust will have no other connection to Massachusetts.

The Trust qualifies as a fixed investment trust in accordance with 830 CMR 62.8.1 and 26 CFR 301.7701-4(c).[\[2\]](#)

B. "Fund Trust"

"Fund Trust" will be organized as an MBT, the transferable common securities of which will be owned by Bank directly. Fund Trust will also issue transferable Securities, all of which will be owned by Trust. The Fund Securities will also be entitled to non cumulative distributions. Fund Trust will exchange the U.S. dollar proceeds from the issue of the Fund Securities for pounds sterling and invest the proceeds in pound sterling denominated bearer debentures issued by a ***** tax resident corporation that will be a wholly owned subsidiary of the bank. The ***** denominated bearer debentures will be entitled to interest at a fixed rate. The ***** tax resident corporation will, in turn, use the proceeds to subscribe for sterling denominated debentures of the bank's *****branch. For federal purposes, Fund Trust will elect to be treated as a partnership and will not be subject to an entity level tax.

The Fund Trust also will conduct no business and have no trustees, employees, offices or property in Massachusetts. No contracts will be executed by the Fund Trust in Massachusetts. The income of the Fund Trust will be from sources outside of Massachusetts. Fund Trust's books and records will also be maintained outside Massachusetts and its trustee will be a non Massachusetts trustee. For purposes of organizing as an MBT, Fund Trust will file and record its declaration of trust instrument with the Massachusetts Secretary of State, as required by G. L. c. 182, § 2.

RULING REQUESTED

The taxpayer requests a ruling that the mere filing of a Massachusetts Business Trust document with the Massachusetts Secretary of State, without more, will not subject the Trust or the Fund Trust to taxation in Massachusetts.

DISCUSSION

In Massachusetts, business trusts are subject to personal income tax and taxed as individuals because they enjoy no franchise conferred by the Legislature. See Letter Ruling 91-2. Massachusetts General Laws, chapter 62, § 8(a) states that "a corporate trust engaged within the commonwealth in any business, activity or transaction, whether or not it maintains an office or place of business within the commonwealth, shall be subject to the taxes imposed by this chapter unless exempted pursuant to paragraph (b)."

General Laws chapter 182 requires the trustees of a Massachusetts business trust to file a copy of a declaration of trust with the Secretary of State and the clerk of every city or town where the trust has its usual place of business. However, the filing of the declaration of trust is not a condition precedent to the existence of the trust. See Letter Ruling 91-2.

The activities of Trust and Fund Trust (the "Trusts") are confined to issuing Securities and common securities and investing the proceeds of the sales of its securities in other Securities or debentures and engaging in incidental activities, all carried on outside Massachusetts. The Trusts will not have any trustees, employees, offices, books and records or property in Massachusetts, nor will they execute any contracts in the Commonwealth. The only connection the trusts will have to Massachusetts is that they will file their respective trust instruments with the Massachusetts Secretary of State, as required by G. L. c. 182, § 2.

In addition, with regard to Trust, the taxpayer has represented that it qualifies as a fixed investment trust. 830 CMR 62.8(l) states that a fixed investment trust "is not, as an entity, engaged in any business, activity or transaction for purposes of M.G.L. c. 62, § 8(a)." See Letter Ruling 88 6.

CONCLUSION

Based upon the facts stated and representations made in the request, and for the reasons discussed above, we determine that the Trusts are not engaged in any business, activity or transaction in the Commonwealth and that the mere filing of a Massachusetts Business Trust document with the

Massachusetts Secretary of State, without more, will not subject the Trust or the Fund Trust to taxation in Massachusetts under G. L. c. 62, § 8.

Very truly yours,

/s/Bernard F. Crowley, Jr.

Bernard F. Crowley, Jr.
Acting Commissioner of Revenue

BFC:DMS:atf

LR 01-12

[\[1\]](#) Fund Trust is discussed below.

[\[2\]](#) The taxpayer has stated that it has received an opinion of counsel stating that the Trust will be classified as a “fixed investment trust” in accordance with 830 CMR 62.8.1 and 36 CFR 301.7701-4(c).